UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*07 July 2008 and 14 October 2008*</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-40* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on 07/07/2008 and 10/14/2008 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

Claims 1, 10, 19, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Planas et al (US Patent 6112015), hereinafter "Planas" in view of Glaser (US Patent

5889520), hereinafter "Glaser" in further view of Chen et al "Dynamic Performance

Monitoring Across A Network", hereinafter "Chen".

For the convenience of the Applicant, the Examiner has pointed out particular
references contained in the prior arts of record in the body of this action. Although the specified
citations are representation of the teachings in the art and are applied to the specific limitations
within the individual claim, other passages and figures may apply as well. The Applicant should
consider the entire reference(s) as applicable as to the limitations of the claims.

As to independent claims 1, 10, 19, and 28-40, Planas teaches monitoring a plurality of

network objects (column 2 lines 52-54), wherein said monitoring includes tracking one or more

attributes (states and statuses) associated with each of the network objects (column 2 lines 63-

67);

displaying a plurality of objects each corresponding to a respective one of the

network objects (column 2 lines 26-28, Fig. 4a);

in response to detecting a change in the one or more attributes associated with a

given network object, altering the appearance of the corresponding object to reflect said change

(column 8 lines 17-25, Fig. 20 → Planas teaches when the state or status changes for a network

object, the attributes (e.g. border, texture, or perimeter) change or modifiers are added). Planas

does not explicitly teach monitoring application tiers and wherein the application tiers execute on

one or more server computers, wherein said monitoring is performed by agent software

executing on each of the one or more server computers.

Glaser teaches a system similar to that of Planas, which provides monitoring of a multi-

tier network (column 7 lines 28-42). It would have been obvious to one skilled in the art at the

time the invention was made to have substituted the network objects of Planas with application

tiers of Glaser to provide a visually interactive display of the status of application tiers.

Chen teaches dynamic performance monitoring across a network wherein the model is

implemented with a server program known as a Data Supplier that runs a daemon on the server

system a one or more client programs called Data Consumers, which are providing the

monitoring facilities (page 13). Chen's daemon is a form of a software agent, called a system

agent. It would have been obvious to one skilled in the art at the time the invention was made to

have incorporated that daemon of Chen for monitoring with the teachings of Planas and Glaser to

provide a detailed, easily conveyed, simplified view of the network connectivity, activities, and

performance to a user.

As to dependent claim 29, 36, and 40, note the discussion above of Planas' monitoring

system and implementing that system to include the monitoring of application tiers. In addition

Glaser teaches wherein the application tiers comprise on or more of a database software

application, a storage software application or a web service software application (Fig. 6).

As to dependent claim 30, Planas teaches monitoring the performance of network

objects. Planas does not teach application tiers and determining a performance view across a

plurality of the application tiers. Glaser teaches application tiers and determining a performance

view across a plurality of the application tiers (column 8 lines 38-67).

It would have been obvious to one skilled in the art at the time the invention was made to

have expanded the monitoring system of Planas by combining the teaches of monitoring

application tiers of Glaser to provide detailed, easily conveyed, simplified view of the network

connectivity, activities, and performance to a user.

As to dependent claim 31, Planas teaches monitoring the performance of network

objects. Planas does not teach application tiers and measuring segmented response times

between at least two application tiers. Glaser teaches application tiers and measuring segmented

response times between at least two application tiers (column 8 lines 55-65).

It would have been obvious to one skilled in the art at the time the invention was made to have expanded the monitoring system of Planas by combining the teaches of monitoring application tiers of Glaser to provide detailed, easily conveyed, simplified view of the network connectivity, activities, and performance to a user.

As to dependent claim 32, 33, 34, 35, 37, 38, and 39, note the discussion above, Planas teaches a network monitoring system which provides visual indicators of attributes of objects within the network. Planas does not teach application tiers and agent modules executing on the application tiers. Glaser teaches the shortcomings of Planas. Glaser discloses that the application tiers can be implemented or one or more computer servers (column 3 lines 25-29) and having a Rapid Application Development tool for monitoring the application tiers. Glaser specifically teaches three tiers which include a database application, application server, and a storage application (Fig. 6). As stated before being that each application can be implemented on different servers, that infers to one skilled in the art that the Rapid Application Development tool would be implemented on each server to collect, store, and display information accordingly.

It would have been obvious to one skilled in the art at the time the invention was made to have expanded the monitoring system of Planas by combining the teaches of monitoring application tiers of Glaser to provide detailed, easily conveyed, simplified view of the network connectivity, activities, and performance to a user.

Claims 2-4, 6, 7, 11-13, 15, 16, 20-22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Planas in view of Glaser in further view of Chen in further view

**of Enchanted Learning (Graphic Organizers, web page updated 10/03/2003), hereinafter
"Enchanted Learning".**

As to dependent claims 2, 11, and 20, Planas teaches objects (Figs. 2a through 2d) and

indicators (Figs. 5 through 19). However, Planas does not teach wherein each of the plurality of

objects includes a core object and one or more indicators in proximity to the core object.

Enchanted Learning teaches using star graphs to organize data about multiple traits or attributes

(indicator) associated with a single topic (core object) (page 6, Fig. 1).

It would have been obvious to one skilled in the art at the time the invention was made to

use a star diagram to represent a performance system to give operators the ability to quickly

visually interpret the state of the network at any time (column 4 lines 66-67 → Planas) and is a

pictorial way of constructing knowledge and organizing information which can convert and

compress information into a structured, simple-to-read, graphic display (page 1 → Enchanted

Learning).

As to dependent claims 3, 12, and 21, Planas teaches wherein said altering comprises

altering the appearance of the one or more indicators (column 12 lines 10-31).

As to dependent claims 4, 13, and 22, Planas teaches wherein said altering further

comprises altering the color of the one or more indicators (column 12 lines 10-31).

As to dependent claims 6, 15, and 24, note the discussion above, Planas teaches

indicators. However, Planas does not teach wherein the one or more indicators are arranged

around the displayed object. Enchanted Learning teaches using star graphs to organize data

about multiple traits or attributes (indicator) associated with a single topic (core object) (page 6, Fig. 1).

It would have been obvious to one skilled in the art at the time the invention was made to use a star diagram to represent a performance system to give operators the ability to quickly visually interpret the state of the network at any time (column 4 lines 66-67 → Planas) and is a pictorial way of constructing knowledge and organizing information which can convert and compress information into a structured, simple-to-read, graphic display (page 1 → Enchanted Learning).

As to dependent claims 7, 16, and 25, Planas teaches a plurality of indicators, note the discussion above. However, Planas does not teach wherein each of the plurality of indicators corresponds to a different attribute of the network objects. Enchanted Learning teaches a star diagram that is used to organize data about multiple attributes associated with a single topic.

It would have been obvious to one skilled in the art at the time the invention was made to use a star diagram to represent a performance system to give operators the ability to quickly visually interpret the state of the network at any time (column 4 lines 66-67 → Planas) and is a pictorial way of constructing knowledge and organizing information which can convert and compress information into a structured, simple-to-read, graphic display (page 1 → Enchanted Learning).

Claims 9, 18, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Planas in view of Glaser in further view of Chen in further view of McMillian et al (US Patent 5926176), hereinafter "McMillian".

As to dependent claims 9, 18, and 27, note the discussion above, Planas teaches monitoring the performance of a network and objects being connected (column 5 lines 49-65). However, Planas does not teach application tiers and wherein each of the one or more of objects is connected by a directional arrow, wherein the directional arrow represents the data flow between the pluralities of network objects. Glaser teaches monitoring of application tiers. McMillian teaches using a flowchart (Fig. 3, column 1 lines 39-43). It is well known that a flowchart uses direction arrows to show the flow of information.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have used a flowchart to illustrate a performance monitoring system to make it easier for an engineer or programmer to visualize how the application's performance is operating (column 1 lines 39-49).

Claims 5, 14, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Planas in view of Glaser in further view of Chen in further view of Enchanted Learning in further view of McMillian.

As to dependent claims 5, 14, and 23, Planas as modified by Enchanted Learning teaches an alert (alarm) "Critical", "Major", and "Minor", with each alarm being associated with

a color. No alarm would be the normal color of the object (column 12 lines 10-43). However,

Planas does not teach coloring the one or more indicators blue for a no-alert status, coloring the

indicators yellow for a near- critical alert status, and coloring the indicators red for a critical alert

status. McMillian teaches runtime conditions of with the following color scheme of red to

indicate blocks executed every time, yellow to indicate blocks executed at least once but not

every time, and blue to indicate never executed (column 7 lines 10-15). It is reasonable for the

color scheme of McMillian to be equivalent to coloring the one or more indicators blue for a no-

alert status (never executed), coloring the indicators yellow for a near- critical alert status

(executed as least once but not always executed), and coloring the indicators red for a critical

alert status (always executed).

It would have been obvious to one skilled in the art at the time the invention was made to

have combined the alarms of Planas as modified by Enchanted Learning with the coloring

scheme of McMillian to readily communicate to the human operator which alarm is associated

with the object.

Claims 8, 17, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Planas in view of Glaser in further view of Chen in further view of Enchanted Learning.

As to dependent claims 8, 17, and 26, note the discussion above, Planas as modified by

Enchanted Learning teaches monitoring attributes. However, Planas does not teach wherein the

monitored attributes include performance trending, current performance, current load, load

trending, service, maintenance, and a custom aspect. Official Notice is taken that it is old and

well known that the attributes of performance trending, current performance, current load, load

trending, service, maintenance, and a custom aspect, which take place in application performance

monitoring systems, which is also taught in Applicant's Background of the Invention, page 2

lines 1-8.

It would have been obvious to one skilled in the art at the time the invention was made to

have included attributes of performance trending, current performance, current load, load

trending, service, maintenance, and a custom aspect, to account for a complete and accurate

performance monitoring system.

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view

of the new ground(s) of rejection. However the use of the references Planas and Glaser have

been used in the rejection of the claims for which the Applicant has submitted arguments, and

have been addressed below.

Applicant asserts that Planas fails to teach or suggest monitoring a plurality of application

tiers, wherein said monitoring includes tracking one or more attributes associated with each of

the application tiers.

The Examiner disagrees.

In response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant fails to address the teachings of Planas in combination with Glaser in respect to the limitation of monitoring a plurality of application tiers, wherein said monitoring includes tracking one or more attributes associated with each of the application tiers. Planas teaches monitoring network objects by tracking attributes associated with the network objects. It is however Glaser, which was discussed in the Office Action mailed 11/26/2007, that teaches monitoring a multi-tier network (column 7 lines 28-42). Taking into consideration the ability to monitor application tiers by representing them as icons as that of Glaser in addition to using additional attributes associated with the icons as that of Planas, provides for the teaching of the above limitation.

It is noted that the Examiner's statement that "Planas does not explicitly teach **monitoring application tiers**" is used to show that Planas teaches the monitoring of network objects to show the transition of network objects to application tiers, which is clearly taught by Glaser.

As pointed out above in regards to the Applicant attacking a reference individually without taking into consideration the secondary reference, the Examiner has not improperly glossed over, or ignored , or incorrectly interpreted the features in a manner contrary to their accepted meanings, but instead has rejected given the claim limitations their broadest reasonable interpretation. It does however appear that the Applicant is placing additional weight and meaning to the limitations, but does not positively recite such features in the claim limitations. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant asserts that the cited art fails to teach or suggest displaying a plurality of objects each corresponding to a respective one of the application tires.

The Examiner disagrees.

Figure 6 of Glaser provides a clear view of a graphical user interface that has a plurality of objects each corresponding to a respective one of the application tiers. The vertical lines on the screen could represent to one skilled in the art a distinction of one tier from the other, while the circles and boxes with corresponding text would represents objects with the Tiers (ex. server).

To further clarify the Examiner's previous position that Plans in view of Glaser teaches displaying a plurality of objects each corresponding to a respective one of the application tires, the icons shown in Figure 6 and referring to column 7 line 28 to column 8 line 4 are representations of objects within different application tiers. The horizontal lines are presented to provide the user with a visual distinction of one tire from the other. The claim limitation broadly interpreted only requires displaying objects (such as App, Servers, and Databases) to correspond to a respective application tier (Tier-2 Application, Tier 3-Database), which is shown by Glaser.

Applicant asserts that the cited are fails to disclose in response to detecting a change in the one or more attributes associated with the given application tier, altering the appearance of the corresponding object to reflect said change.

The Examiner disagrees.

Note the discussion above, Glaser teaches monitoring application tiers. Planas teaches

detecting changes of the attributes associated with an object, and altering the appearance of the

corresponding object to reflect the change. While Planas may teach just network objects, it is the

combination of Planas and Glaser that teaches the above limitation. Applicant appears to be

arguing that the present invention only displays one icon (a tier icon) as the visual representation

of the tiers. However the current claim language only requires representation of tiers which is

shown by Glaser by the separation of the tiers in Figure 6. Glaser's ability to show a graphical

representation of Application tiers provides more than enough evidence for one skilled in the art

to combine with Planas to provide for functionality of detecting and displaying changes by use of

the icons as that of the objects in Planas.

Applicant asserts that a proper motivation to combine Planas and Glaser has not been

provided. Specifically the motivation provided by the Examiner is simply a statement of

presumed benefit of Applicant's invention.

The Examiner disagrees.

The Examiners motivation to combine Planas and Glaser while the Applicant may feel is

a broad motivation it is one that is expressed in both reference and is well known advantage to

one skilled in the art. Further both references are analogous in art and seek to solve the same

problem, which is monitoring of objects in a network whether individually or as a tier and also to

improve network management (column 2 lines 14-15, Planas) and to identify the network

performance bottlenecks and optimize the network resources accordingly (page 2 lines 19-24).

Applicant asserts that the references fail to teach or suggest wherein each of the plurality of indicators corresponds to a different attribute of the application tier.

The Examiner disagrees.

It should be noted that the Applicant's arguments attack only the references of Planas and Enchanted Learning, however it is the Glaser reference that teaches the applications tiers and is therefore the combination of the reference that teaches the above limitation. Enchanted Learning's discloses organizing data about multiple attributes associated with a single topic. Using the application tiers of Glaser as the single topic would account for the indicators to correspond to a different attribute of the application tier.

Applicant asserts that the cited references fails to teach wherein each of the one or more objects is connected by a directional arrow, wherein the directional arrow represents the data flow between the plurality of application tiers.

The Examiner disagrees.

McMillan's flowcharts include directional arrows. While those arrows may represent logic flow, the mere use of the arrows to show informational flow would provide one the knowledge of data flow following the direction of the arrows. Also directional arrows are stated in the Office Action dated 11/26/2007 are well known to one skilled in the art to show information flow.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea N. Long whose telephone number is 571-270-1055. The examiner can normally be reached on Mon - Thurs 6:00 am to 3:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached on 571-272-4137. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea N Long/
Examiner, Art Unit 2176

/Rachna S Desai/
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